86-2039

NO. 87 -

Supreme Court, U.S.
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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term , 1986

SAMUEL OKIN,

Appellant,

-against-

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDICES

SAMUEL OKIN,
Appellant,
241 Sands Avenue,
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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SAMUEL OKIN, *Petitioner-Appellant,* v. COMMISSIONER OF INTERNAL REVENUE, *Respondent-Appellee.*	No. 85-7594 Tax Court No. 24746-83 OPINION

Submitted August 12, 1986*

Filed January 26, 1987

Before: Thomas Tang, Warren J. Ferguson and Cynthia Holcomb Hall, Circuit Judges.

Per Curiam

Appeal from Decision of the United States Tax Court

SUMMARY

Taxation

Appeal from judgment of Tax Court. Affirmed.

Appellant Okin had a long-term capital gain in 1980. He computed his tax return by income averaging. He did not report any liability for the alternative minimum tax. On audit, the Tax Commissioner determined that he was defi-

*The panel finds this case appropriate for submission without oral argument pursuant to Ninth Circuit Rule 3(f) and Fed. R. App. P. 34(a).

cient, in part, for not paying any alternative minimum tax. The Tax Court sustained the deficiency, rejecting Okin's claims that the alternative minimum tax should be computed on the basis of an adjusted average annual taxable income, and that the alternative minimum tax was an unconstitutional taking of property without due process of law and without adequate compensation.

[1] This court rejects Okin's argument that his alternative mimimum tax should be computed on the basis of his average annual adjusted taxable gross income. By the plain meaning of its text, the alternative minimum tax provision applies in addition to the other provisions. [2] Income averaging provisions do not alter the taxpayer's income for the given year. Rather, they reduce the rate at which that income is taxed. [3] Unlike the income-averaging provisions, the alternative minimum tax is imposed in addition to all other taxes imposed. [4] The alternative minimum tax is imposed to the extent it exceeds the regular tax. [5] This court finds that, although the imposition of the alternative minimum tax in this case virtually nullified Okin's tax savings by income-averaging, the result is not contrary to congressional intent. [6] The court also agrees with the Tax Court that analogy to the former minimum tax upon preference items supports the conclusion that income averaging does not apply to the minimum tax. [7] Okin also argues that the alternative minimum tax constitutes a taking of property without due process of law and without adequate compensation. [8] It is commonplace that the due process clause places no limits upon the congressional taxing power. [9] The court rejects Okin's argument that the Tax Court's interpretation violates the due process clause because it is discriminatory, finding a reasonable relation to a legitimate governmental end.

COUNSEL

Samuel Okin, Las Vegas, Nevada, for the petitioner-appellant.

Department of Justice, Roger M. Olsen, Washington, D.C., for the respondent-appellee.

OPINION

PER CURIAM:

Samuel Okin appeals from the Tax Court's determination of an $18,255.70 deficiency in income tax for the year 1980. Okin contends that the alternative minimum tax provision of I.R.C. § 55 (Supp. IV 1980)[1] should not be computed by starting with his adjusted gross income, but rather by starting with an "adjusted average annual taxable income" derived from the income averaging provisions of I.R.C. §§ 1301-1305 (26 U.S.C. §§ 1301-1305 (1982)). Okin observes that the implementation of section 55 may defeat the advantages of sections 1301-1305. He also claims that section 55, as construed by the Commissioner, constitutes an unconstitutional taking of property without due process of law and without adequate compensation. The Tax Court rejected Okin's statutory and constitutional claims. *Okin v. Commissioner*, 49 T.C.M. (CCH) 1315 (1985). We affirm.

I

FACTS

In 1980, Okin had a long-term capital gain of $226,718. On his federal tax return for that year he computed his taxes by income averaging, utilizing schedules G and TC. *See* I.R.C. §§ 1301-1305. Okin did not report any liability for the alternative minimum tax. *See* I.R.C. § 55.

[1]The version of section 55 applicable to the tax year 1980 can be found in 26 U.S.C. § 55 (Supp. IV 1980). The section for tax year 1980 can also be reconstructed from the historical notes appended to the current provision in the West Publishing and Lawyer's Cooperative versions of the Code.

On audit, the Commissioner determined that Okin was liable for $308.10 in additional section 1 taxes[2] and $17,947.60 in alternative minimum tax. Accordingly, he issued Okin a notice of deficiency for $18,255.70 in income taxes for the taxable year 1980.

Okin petitioned the Tax Court for a redetermination of the deficiency, asserting that the alternative minimum tax should not be computed by starting with his adjusted gross income, but rather by starting with an "adjusted average annual taxable income" derived from the income averaging provisions of I.R.C. §§ 1301-1305. He also claimed that the alternative minimum tax, as applied by the Commissioner, was an unconstitutional "taking of property without due process of law and without adequate compensation."

The Tax Court sustained the deficiency as determined by the Commissioner. The court followed its ruling in *Riley v. Commissioner*, 66 T.C. 141 (1976), which had rejected a similar interpretation of former I.R.C. § 56 (1976).[3] *Okin*, 49

[2]This addition results from the Commissioner's determination of inaccuracies on Okin's forms for I.R.C. § 1 taxes. This determination is not disputed on appeal.

[3]Former section 56 applied an add-on minimum tax to certain tax preference items. It was imposed in addition to the regular tax at a flat rate above a specified threshold amount. *See* 26 U.S.C. § 56 (1976). In contrast, the section 55 tax, enacted in 1978, is progressive and is imposed to the extent it exceeds the regular tax. *See* 26 U.S.C. § 55 (Supp. IV 1980) (the section as applicable to tax year 1980). Although section 56 is referred to as the "add-on minimum tax" to distinguish it from the "alternative minimum tax" of section 55, both sections are "add-on" provisions since they increase a taxpayer's liability over what is otherwise calculated under section 1.

In 1982, Congress reordered the sections, adding a tax on all preference items to section 55, which thus became the only add-on tax applicable to taxpayers other than corporations. Section 56 was amended to cover only corporations. *See* 26 U.S.C. §§ 55, 56 (1982). *See generally* B. Bittker & L. Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 113.3.12, at S111-40 to 42 (Supp. No. 3 1986).

T.C.M. (CCH) at 1319. The court in *Riley* had held that the add-on minimum tax on tax preference items of section 56 did not incorporate the income averaging provisions of sections 1301 through 1305. *See Riley*, 66 T.C. at 144. The court also rejected Okin's constitutional claims, relying on *Graff v. Commissioner*, 74 T.C. 743 (1980), *aff'd per curiam*, 673 F.2d 784 (5th Cir. 1982), and *Wyly v. United States*, 662 F.2d 397 (5th Cir. 1981). Okin timely appeals.

Two issues are presented for determination:

1. Did the Tax Court err in determining that income averaging may not be used to determine alternative minimum tax liability under I.R.C. § 55?

2. Is I.R.C. § 55 constitutional?

II

STANDARD OF REVIEW

Decisions of the Tax Court are reviewed on the same basis as decisions in civil bench trials in the United States District Courts. *Mayors v. Commissioner*, 785 F.2d 757, 759 (9th Cir. 1986). This court thus reviews de novo the Tax Court's interpretation and application of statutes. *Betson v. Commissioner*, 802 F.2d 365, 367 (9th Cir. 1986); *see also United States v. McConney*, 728 F.2d 1195, 1201 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824 (1984).

III

DISCUSSION

A. *Income Averaging and Alternative Minimum Tax*

1. *Plain Meaning of Section 55*

Okin maintains that his alternative minimum tax should be computed not by starting with $99,432, the figure representing adjusted gross income, but rather with $25,105.28, which Okin refers to as his "average annual adjusted taxable gross income." This $25,105.28 figure is derived from Okin's computation of his section 1 tax under the income averaging provisions of sections 1301-1305.

[1] Okin's interpretation is incorrect. By the plain meaning of its text, the alternative minimum tax provision applies "in addition" to the other provisions. I.R.C. § 55. The income averaging provisions, by their terms, apply only to "the tax imposed by section 1." I.R.C. § 1301. The provisions are therefore separate. The reference to "gross income" in section 55(b)(1) is unambiguous; it does not refer to any adjusted figure. In fact, section 55 does not refer to sections 1301-1305, nor vice-versa.[4] Also, the provisions of sections 1301-1305 could have no effect on "gross income" because the income-averaging provisions are intended to adjust the rate of taxation, not the amount of gross income. *See generally* 4 B. Bittker, *Federal Taxation of Income, Estates and Gifts* ¶ 111.3.13 (1981).

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[4]The forms themselves support this analysis. For 1980, form 6251 was used for computation of alternative minimum tax. On line 1, the adjusted gross income corresponds with Form 1040, line 32, which is the adjusted gross income prior to calculation of income-averaged income.

2. *Purpose of Alternative-Minimum Tax*

[2] I.R.C. §§ 1301-1305 allow income averaging for "the tax imposed by section 1." Income averaging is designed to ease the burden of a progressive tax-rate schedule on a taxpayer with widely fluctuating or rapidly rising income. 4 B. Bittker, *supra*, ¶ 111.3.13, at 111-70. The provisions do not alter the taxpayer's income for the given year. Rather, they reduce the rate at which that income is taxed. Thus, in a case such as Okin's, where a large capital gain is realized in one year, the provisions lower the tax rate in a compensatory fashion to equal, ideally, the rate(s) that would have applied had the income been spread evenly over the preceding base-period years and the tax year in question. *See generally id.*

[3] Unlike the income-averaging provisions, the alternative minimum tax provided by I.R.C. § 55 is not a section 1 tax. Rather it is imposed "in addition to all other taxes imposed by this title. . . ." I.R.C. § 55(a). This tax was fashioned to tax certain income which was not otherwise being taxed. Specifically, it was directed at taxpayers with, among other things, large amounts of net capital gain and either low amounts of ordinary income or offsetting losses. By enacting this tax, Congress intended for every individual to pay at least a reasonable minimum amount of tax with respect to large capital gains while nevertheless encouraging capital formation.

[4] The alternative minimum tax is imposed to the extent it exceeds the regular tax. I.R.C. § 55(a). It is computed by first determining the "alternative minimum taxable income." This term, as defined in section 55(b)(1), consists of taxable income, plus certain amounts that were allowable as deductions in other sections, including the net capital gain deduction. (This figure is enlarged in Okin's case by the inclusion of his capital gains.) An amount ranging from 10 to 25 percent of this figure (the tentative alternative minimum tax) is then compared to the "regular" income tax liability (the tax imposed by section 1, with adjustments, in Okin's case, the

tax using the income-averaging method). If the tentative alternative minimum tax exceeds the regular tax, "then there is imposed (in addition to all other taxes imposed by this title) a tax equal to the amount of such excess." I.R.C. § 55(a).

[5] The gravamen of Okin's complaint is that the Commissioner's computations under I.R.C. § 55 virtually nullify his tax savings under the income-averaging provisions. In this case section 55 does have that effect.[5] But this result is not contrary to congressional intent. Although section 55 increases Okin's total tax, his capital gain deductions overall decreased his total liability under sections 1 and 55 to almost one-third of what it would otherwise have been. Thus, both congressional concerns in enacting section 55—tax on gains and incentive for capital formation—are served. *See* 4 B. Bittker, *supra* p. 5, ¶ 111.3.12, at 111-67 to 68.

3. *Analogy to Section 56*

[6] We also agree with the Tax Court that, in addition to the plain meaning and purpose of section 55, analogy to the former minimum tax upon preference items supports the conclusion that income averaging does not apply to the minimum tax.[6] Other courts have reached that conclusion. *See Stockwell v. Commissioner*, 46 T.C.M. (CCH) 1196 (1983), *aff'd*, 736 F.2d 1051 (5th Cir. 1984); *Riley v. Commis-*

[5] The Tax Court noted that Okin's section 1 tax computed without income averaging would be $51,770 instead of $33,493.10. Thus, on his section 1 taxes, Okin would save $18,276.90 by income averaging. However, his tentative alternative minimum tax, as computed by the Commissioner, is $51,440.70. Since this amount is imposed to the extent it exceeds the regular tax, Okin's total liability (regular tax and alternative minimum tax) would be $51,770 without income averaging, compared with $51,440.70 with income averaging. Hence, the effect of the imposition of the alternative minimum tax is that by income averaging Okin saves only $329.30 instead of $18,276.90. *See Okin*, 49 T.C.M. (CCH) at 1318 n.10.

[6] *See supra* note 3 for an explanation of the relation of the preference tax (§ 56) to the minimum tax (§ 55).

sioner. 66 T.C. 141 (1976). The minimum tax imposed under former section 56, like section 55 here, was an "add-on" minimum tax imposed in addition to the ordinary tax of section 1. Application of the averaging provisions is equally inappropriate to section 55 as to section 56.

These two provisions are part of the same statutory scheme. The alternative minimum tax provisions of section 55 were enacted at the same time the minimum tax provisions of section 56 were amended. *See* 4 B. Bittker, *supra* p. 5, ¶ 111.3.12, at 111-67 to 68 (quoting *Joint Committee on Taxation, General Explanation of the Revenue Act of 1978*, 95th Cong., 2d Sess. 261-62 (1979)). The Joint Committee opined that the substitution of the alternative minimum tax for the "add-on" minimum tax of section 56 in the case of capital gains would better accomplish the purpose of the "add-on" tax. *Id.*

There is no indication that Congress intended a different rule to apply to section 55 than to section 56. Accordingly, the Tax Court correctly rejected Okin's contentions regarding the operation of section 56.

B. *Constitutionality of Section 55*

[7] Okin argues that the alternative minimum tax of I.R.C. § 55, as applied by the Commissioner, constitutes a "taking of property without due process of law and without adequate compensation." The Tax Court allowed Okin to raise this claim after trial by an amended petition, and quickly dispatched it. *Okin*, 49 T.C.M. (CCH) at 1320. We do so as well.

[8] It is commonplace that the due process clause ordinarily places no limits upon the congressional taxing power. *See A. Magnano Co. v. Hamilton*, 292 U.S. 40, 44 (1934). As the Supreme Court noted in another context,

> [t]he claim that a particular tax is so unreasonably high and unduly burdensome as to deny due process

> is both familiar and recurring, but the Court has consistently refused . . . to undertake the task of passing on the "reasonableness" of a tax that otherwise is within the power of Congress . . . .

City of Pittsburgh v. Alco Parking Corp., 417 U.S. 369, 373 (1974). Okin's claim of a taking in violation of due process is thus groundless.

Apparently hoping to fit his claim into the category of "rare and special circumstances" where due process limits the taxing power, *see A. Magnano Co.*, 292 U.S. at 44, Okin alleges that the Commissioner's and the Tax Court's interpretations of section 55 are "discriminatory." By discriminatory, Okin apparently means that in his case section 55 negates the effect of the averaging provisions. But that which Congress grants through the averaging provisions it may take away through the minimum tax. A classification of taxation is permissible if it has a reasonable relation to a legitimate governmental end. *Welch v. Henry*, 305 U.S. 134, 144 (1938). In enacting the minimum tax, Congress attempted to remedy general taxpayer distrust of the system growing from large numbers of taxpayers with large incomes who were yet paying no taxes. *See* 4 B. Bittker, *supra* p. 5, ¶ 111.3.11, at 111-60 to 61 (discussing the enactment of section 56); *see also id.* ¶ 111.3.12, at 111-67 to 68 (section 55 enacted to better serve the purposes that originally motivated the passage of section 56). Here, where the benefits of averaging were in part taken away by the minimum tax, we do not pretend to interfere in Congress's ordering of the tax system.[7]

We thus join a number of other courts in upholding the constitutionality of sections 55 and the related section 56. *See Wallach v. United States*, 800 F.2d 1121, 1123-24 (Fed. Cir.

[7]We note that Okin's total tax liability ($51,540) is only about 23% of his net long-term capital gain alone ($226,718). His is an odd case to raise a question of the fairness of Congress's allocation of the tax burden.

1986) (sections 55 and 56); *Wyly v. United States*, 662 F.2d 397, 403-06 (5th Cir. 1981) (section 56); *Graff v. Commissioner*, 74 T.C. 743, 765-67 (1980) (section 56), *aff'd per curiam*, 673 F.2d 784 (5th Cir. 1982). The section 55 alternative minimum tax is a rational means of obtaining a broad-based tax, and therefore is constitutional.

The decision of the Tax Court is

AFFIRMED.

APPENDIX B

T. C. Memo. 1985-199

UNITED STATES TAX COURT

SAMUEL OKIN, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 24746-83. Filed April 24, 1985.

Held: Income averaging cannot be used in computing alternative minimum tax under section 55, IRC, as in effect during 1980.

Samuel Okin, pro se.

Jeffrey Millward, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

DRENNEN, Judge: Respondent determined a deficiency of $18,255.70 in petitioner's 1980 Federal income tax. The sole issue for decision is whether petitioner may use a figure derived from the computation of his section 1 tax under the income

averaging provisions in order to determine his liability for the alternative minimum tax imposed by section 55.1/ Our findings of fact and opinion are combined for easier discussion.

Some of the facts have been stipulated by the parties and are so found. The stipulation of facts and the exhibits attached thereto are incorporated herein by this reference.

Petitioner Samuel Okin resided in Las Vegas, Nevada at the time he filed his petition in this case. Petitioner filed a Federal income tax return for the taxable year 1980 on which he elected the filing status of married filing separate return.

Petitioner's 1980 return reported a liability for the income tax imposed by section 1 (hereinafter referred to as the "section 1 tax") of $31,842. The correct section 1 tax liability as stipulated is $33,493, the amount determined by respondent in the notice of deficiency.

Petitioner's 1980 return reported no liability for the alternative minimum tax under section 55.

Petitioner had a net capital gain from the sale of stock in 1980 in the amount of $226,718. Petitioner's net capital gain deduction allowed by section 1202(a) and claimed on his return was $136,030.80.

The $136,030.80 net capital gain deduction is a tax preference item under section 57(a)(9)(A) for the purpose of determining petitioner's alternative minimum tax liability.

1/ All section references are to the Internal Revenue Code of 1954, as in effect during 1980.

Petitioner elected to compute his section 1 tax using the income averaging provisions of sections 1301-1305. For the purpose of the income averaging computation, petitioner's taxable income was $97,432,[2] his averageable income was $90,408.40, and his total base period income was $23,412. Petitioner's correct section 1 tax, using the income averaging provisions, is computed as follows:[3]

Taxable income		$97,432.00
Total base period income	$23,412	
30% of total base period income		(7,023.60)
Averageable income		90,408.40
30% of base period income (item A)	$ 7,023.60	
20% of averageable income	18,081.68	
Total (item B)	25,105.28	
Plus Excess community income	0	
Total (item C)	25,105.28 [4]	
Tax on item C		7,440.58
Tax on item B	7,440.58	
Less: tax on item A	927.45	
Difference	6,513.13	
Difference multiplied by four		26,052.52
Tax using income averaging method		$33,493.10

Petitioner's section 1 tax computed without using the income averaging provisions would be $51,770.

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[2] Petitioner had dividend income of $42,797, taxable capital gain income of $90,687, excess itemized deductions of $34,052, and was allowed two exemptions.

[3] Certain steps of the income averaging computation which are not relevant to this discussion have been deleted.

[4] The $25,105.28 figure is designated by petitioner as "adjusted average annual taxable income." Petitioner contends that this figure should be used as the starting point for computing his alternative minimum tax. (See discussion infra).

Respondent determined that in addition to the section 1 tax of $33,493, petitioner is liable for the alternative minimum tax in an amount of $17,947.60. Respondent computed petitioner's alternative minimum tax as follows:

Corrected tax table income			$99,432
Less: Zero bracket amount		$ 1,700	
Allowable exemptions (2)		2,000	
Difference			(3,700)
			95,732
Plus: Adjusted itemized deductions		0	
Capital gains deduction		136,030.80	
			136,030.80
Alternative minimum taxable income			231,762.80
Amount taxable at 10%	20,000.00	Tax	2,000.00
Amount taxable at 20%	20,000.00	Tax	4,000.00
Amount taxable at 25%	181,762.80	Tax	45,440.70
Total tentative alternative minimum tax			51,440.70
Less: Regular income tax less tax credits			33,493.10
Alternative minimum tax			$17,947.60 5/

Section 55 imposes an alternative minimum tax on noncorporate taxpayers to the extent that it exceeds the taxpayer's "regular tax" computed without regard to section 55.6/

5/ These are the figures used in the notice of deficiency. See following for comments thereon.

6/ As effective during 1980, section 55 provides in pertinent part:

Sec. 55. ALTERNATIVE MINIMUM TAX FOR TAXPAYERS OTHER THAN CORPORATIONS.

(a) ALTERNATIVE MINIMUM TAX IMPOSED.--In the case of a taxpayer other than a corporation, if--

(footnote continued)

(footnote continued from previous page)

(1) an amount equal to the sum of--

(A) 10 percent of so much of the alternative minimum taxable income as exceeds $20,000 but does not exceed $60,000 plus

(B) 20 percent of so much of the alternative minimum taxable income as exceeds $60,000 but does not exceed $100,000, plus

(C) 25 percent of so much of the alternative minimum taxable income as exceeds $100,000, exceeds

(2) the regular tax for the taxable year,

then there is imposed (in addition to all other taxes imposed by this title) a tax equal to the amount of such excess.

(b) DEFINITIONS.--For purposes of this section--

(1) ALTERNATIVE MINIMUM TAXABLE INCOME.--The term "alternative minimum taxable income" means gross income--

(A) reduced by the sum of the deductions allowed for the taxable year,

(B) reduced by the sum of any amounts included in income under section 86 or 667, and

(C) increased by an amount equal to the sum of the tax preference items for--

(i) adjusted itemized deductions (within the meaning of section 57(a)(1), and

(ii) capital gains (within the meaning of section 57(a)(9)).

***

(2) REGULAR TAX.--The term "regular tax means the taxes imposed by this chapter for the taxable year (computed without regard to this section and without regard to the taxes imposed by sections 72(m)(5)(B), 402(e), 408(f), 409(c), and 667(b)) reduced by the sum of the credits allowable under subpart A of part IV of this subchapter (other than under sections 31, 39 and 43). For purposes of this paragraph, the amount of the credit allowable under such subpart shall be determined without regard to this section.

(3) TREATMENT OF ZERO BRACKET AMOUNT.--In the case of an individual who does not itemize his itemized deductions, the zero bracket amount shall be treated as a deduction allowed.

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The alternative minimum tax was added by the Revenue Act of 1978[7/] in conjunction with the decision to exempt the capital gain deduction under section 1202 from the add-on minimum tax under section 56. The congressional intent behind these changes was to remove the disincentives to capital formation associated with the add-on minimum tax on capital gains preferences, yet ensure that individuals having high incomes but paying low regular taxes would still be subject to a reasonable amount of tax on their capital gains. See Joint Committee on Taxation, 95th Cong., 2d Sess., General Explanation of the Revenue Act of 1978, at 261-262 (1979), quoted in 4 B. Bittker, Federal Taxation of Income, Estates and Gifts ¶111.3.12 (1981).

The alternative minimum tax is imposed on "alternative minimum taxable income" according to a rate schedule which (as effective in 1980) exempts the first $20,000 of alternative minimum taxable income, applies a 10 percent rate on amounts greater than 20,000 but less than $60,000, applies a 20 percent rate for amounts greater than $60,000 but less than $100,000, and applies a 25 percent rate for amounts exceeding $100,000. The tentative tax so computed is then compared to the regular tax (which includes the add-on minimum tax on tax preferences under section 56), and if the tentative tax is greater than the regular tax, such excess is imposed as a tax "in addition to all other taxes." Section 55(a).

7/ Pub. L. 95-600, 92 Stat. 2763.

The tax base for the alternative minimum tax imposed by section 55(a) is "alternative minimum taxable income," which is defined in section 55(b) as gross income, reduced by allowable deductions and by amounts included in income under sections 86 (relating to alcohol fuel credits) or 667 (relating to accumulation distributions from trusts), and increased by two tax preference items--adjusted itemized deductions (as defined in section 57(a)(1)) and capital gains (as defined in section 57(a)(9)). Section 57(a)(9) defines as an item of tax preference an amount equal to the net capital gain deduction determined under section 1202.

In accordance with this statutory scheme, respondent determined petitioner's alternative minimum tax liability by subtracting from his gross income of $133,484 allowable deductions in the amount of $34,052 to arrive at corrected "tax table income" of $99,432. This amount was further reduced by $3,700 to account for the zero bracket amount under section 63(d) and the deduction for personal exemptions under section 151. The resulting $95,732 figure was then increased by $136,030.80, the amount of petitioner's capital gains deduction, as provided by sections 55(b)(C)(ii) and 57(a)(9) to produce alternative minimum taxable income of $231,762.80. Respondent then determined the tentative alternative minimum tax to be $51,440.70[8/] which

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8/ Although neither party has mentioned it, respondent's computation appears to us to contain both an error in addition and an erroneous application of the formula provided in the (footnote continued)

exceeded petitioner's regular income tax of $33,493.10 by $17,947.60, resulting in an alternative minimum tax of that amount.

Petitioner contends that his alternative minimum tax should be computed by starting not with the $99,432 figure used by respondent, but rather with a figure of $25,105.28 which petitioner refers to as his "adjusted average annual taxable income." This $25,105.28 figure is derived from the computation of petitioner's section 1 tax under the income averaging provisions of section 1301-1305.9/ In effect, petitioner argues that because he elected to use the income averaging provisions to compute his section 1 tax, he should also get the benefit of the income averaging in computing his alternative minimum tax.

(footnote continued from previous page)
statute.

First, the 3 figures used in the taxable brackets do not equal the alternative minimum taxable income figure of $231,762.80. They are $20,000, $20,000 and $181,762.80. The income in the third bracket taxed at 25% should be $191,762.80, if respondent's other figures are right, rather than $181,762.80.

Secondly, and more importantly, the brackets do not conform to the formula. As mentioned above, the first $20,000 of alternative minimum taxable income is not taxed; the next $40,000 ($20,000 to $60,000) is taxed at 10%; the next $40,000 ($60,000 to $100,000) is taxed at 20%; and the remaining $131,762 ($100,000 to $231,762.80) is taxed at 25%. This produces a tentative alternative minimum tax of $44,940.70 rather than the $51,440.70 arrived at by respondent. When the regular tax is deducted therefrom the alternative minimum tax is $11,447.60 rather than the $17,947.60 arrived at by respondent.

The parties should consider this in submitting proposed computations of deficiency under Rule 155.

9/ See income averaging computation and note 4, supra.

He argues strenuously that respondent's "erroneous computation" of his alternative minimum tax "nullifies" the benefit he received from the income averaging provisions, contrary to the specific terms of the Internal Revenue Code and to congressional intent.10/ Despite petitioner's impassioned plea for relief from this alleged unfairness, we find no merit to the arguments presented in his lengthy briefs.

The statutory scheme governing the imposition and computation of the alternative minimum tax is clear and precise, and leaves, on these facts, no room for interpretation. The starting point for the computation is "gross income," which is then decreased to account for the taxpayer's allowable deductions and increased by taxpayer's items of tax preference. Section 55(b)(1). Petitioner's attempt to substitute "average annual taxable income" (a term apparently of his own creation) for

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10/ Petitioner's method of computing his alternative minimum tax results in no liability for that tax because the tentative alternative minimum tax ($32,859) does not exceed the regular income tax ($33,493). Petitioner also correctly observes that had he not elected to use the income averaging method to compute his section 1 tax, he would not be liable for any alternative minimum tax, due to the fact that his regular tax of $51,770 would exceed the tentative alternative minimum tax of $51,440.70. The fuel for petitioner's vehement arguments herein appears to be this perceived unfairness of having his benefits from income averaging negated by the alternative minimum tax. The heading for Point III of petitioner's reply brief states: "Respondent's Fallacious Contentions Encompass Untold Devastating Results and Consequences Almost Beyond Comprehension." (Petitioner's Reply Brief, p. 8).

"gross income" is without statutory foundation, and reflects a misunderstanding of the relationship (or lack thereof) between the alternative minimum tax and the income averaging provisions.

The alternative minimum tax imposed by section 55 is entirely separate from the section 1 tax. This is clear from the language of section 55(a) which states that "there is imposed (in addition to all other taxes imposed by this title) a tax equal to the amount of such excess." The alternative minimum tax is imposed and computed independently of the section 1 tax; the only relationship between these two taxes is that only the excess, if any, of the tentative alternative minimum tax over the taxpayer's "regular tax" (essentially the section 1 tax, with certain modifications as provided in section 55(b)(2)) is imposed as the alternative minimum tax. This feature distinguishes the alternative minimum tax under section 55 from the "add-on" minimum tax imposed by section 56.11/ It is clear from the statutory scheme that the method by which the section 1 tax is computed has no impact on the computation of the alternative minimum tax. Section 1301 specifically provides that the income averaging provisions apply to the "tax imposed by section 1." Thus, petitioner's use of the income averaging provisions to

11/ The add-on minimum tax no longer applies to noncorporate taxpayers. In §§ 201(a), 201(c) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 411, Congress repealed the add-on minimum tax for individuals, and broadened the alternative minimum tax under section 55. See Conference Report on Tax Equity and Fiscal Responsibility Act of 1982, H. Rept. No. 97-760 at 473-476 (1982). 1982-2 C.B. 600, 602-609.

compute his section 1 tax is irrelevant to the computation of his alternative minimum tax. His contention that his election to use the income averaging provisions of sections 1301-1305 caused the figure $25,105.28 (derived from the income averaging computation) to be substituted for the $99,432 figure for the purposes of the alternative minimum tax computation is utterly without statutory foundation.12/

We find this issue to be controlled by our opinion in Riley v. Commissioner, 66 T.C. 141 (1976), in which we rejected a similar attempt to apply the income averaging provisions to an entirely independent minimum tax on items of tax preference. Although Riley involved the add-on minimum tax under section 56, the general statutory scheme and the critical statutory language are virtually identical to that of the alternative minimum tax in issue herein.13/ We think the following language in Riley is

12/ We feel it appropriate to recognize petitioner's remarkable tenacity and creativity in pressing his arguments in the face of this inflexible statutory scheme. His argument borders on the metaphysical; according to petitioner, when he attached the schedule electing income averaging to his return, his "adjusted gross income" was transformed, for all purposes, into "adjusted average annual taxable income" (the $25,105.28 figure). This unique approach to statutory construction is not tenable given the precise definitional provisions involved.

13/ The language of section 56(a) involved in Riley v. Commissioner, 66 T.C. 141 (1976), reads as follows: "In addition to all other tax imposed by this chapter, there is hereby imposed **** The taxes on items of tax preference imposed by sections 55 (the alternative tax) and 56 (the add-on tax) perform an identical function -- ensuring that taxpayers having high adjusted gross incomes, but paying little regular tax because of various tax preferences, are nevertheless subject to a reasonable amount of tax. See 4 B. Bittker, Federal Taxation of

(footnote continued)

equally apposite to the case at hand:

> The tax imposed by section 56 is specifically stated to be "in addition to the other taxes imposed by this chapter." Sections 56 through 58 appear to be a self-contained unit of taxation, whereas computation of the tax imposed by section 1 may involve the application of several other Code sections. The deductions, exclusions, and credits allowed in the computation of section 1 tax may not be utilized in the computation of the tax imposed by section 56 unless specifically provided.
>
> Sections 1301 through 1305 do not provide a mechanism by which the minimum tax on tax preference income may be averaged. Section 1301, on its face, has reference only to the tax imposed by section 1. In our opinion, if Congress had intended to allow income averaging in the computation of section 56 tax, it undoubtedly would have said so. We are unwilling to imply such an intent on the part of Congress.
>
> To apply sections 1301 through 1305 in the manner urged by petitioners would defeat the purpose behind section 56 since their tax preference items would entirely escape the additional tax imposed by that section. We think it was clearly the intention of Congress to make sure that such items were at least subjected to some minimum tax. [66 T.C. at 144]

We followed our opinion in Riley in Stockwell v. Commissioner, T.C. Memo 1983-520, which was recently affirmed by the Fifth Circuit. Stockwell v. Commissioner, 736 F.2d 1051 (5th Cir. 1984). In affirming the Tax Court in Stockwell the 5th Circuit noted:

> The Stockwells correctly note that in the Tax Reform Act of 1969, P.L. 91-172, Congress specifically amended the income averaging provision to include the

---

(footnote continued from previous page)
Income, Estates and Gifts, ¶¶ 111.3.11, 111.3.12 (1981). Both the sec. 55 tax and the sec. 56 tax are computed by reference to certain items of tax preference as defined in sec. 57. Although the computation and scope of these provisions differ, their effect -- to impose an additional tax on items of tax preference independent of the "regular tax" -- is identical. In fact, as a result of later modifications by Congress, the alternative minimum tax has been substituted for the add-on minimum tax in the case of noncorporate taxpayers. See note 11, supra.

> averaging of capital gains. From this linchpin, they reason that the minimum tax imposed by §56 likewise should be averagable. We cannot agree. Neither the language of the statute nor the legislative history supports that conclusion.
>
> ***
>
> *** Income averaging applies only to taxes imposed by §1, it does not apply to the minimum tax imposed by §56. [736 F.2d at 1052-1053].

We think these cases compel a decision for the respondent herein.

After the trial in this case was concluded, we permitted petitioner to file an amended petition raising the additional argument that section 55, as applied by respondent in this context, is unconstitutional. Petitioner's amended petition states several purported constitutional objections to the method by which respondent computed his alternative minimum tax.[14/] We find no merit to these objections, which are not supported by any specific references to the Constitution or citations to precedent. The constitutionality of the minimum tax under section 56 has been upheld. Wyly v. United States, 662 F.2d 397, 403-406 (5th Cir. 1981); Graff v. Commissioner, 74 T.C. 743, 765-767 (1980), affd. per curiam, 673 F.2d 784 (5th Cir. 1982). As we have discussed, the purpose and statutory scheme of the minimum tax under section 56 and the alternative minimum tax

---

14/ The amended petition alleges, among other things, that section 55 "discriminates" against petitioner and other taxpayers having preferential income and the right to elect to income average, and that section 55 as "interpreted" by respondent constitutes a "taking [of] substantial property of the taxpayer without due process of law and without adequate compensation."

under section 55 are quite similar,15/ and we think the thorough discussions in the aforementioned cases upholding the constitutionality of the minimum tax apply with equal force to the alternative minimum tax.

Decision will be entered under Rule 155.16/

15/ See note 13, supra.

16/ While we decide the sole issue in favor of respondent and would usually enter a decision for respondent in the amount of deficiency determined in the notice of deficiency, we will leave the amount of the decision open until the parties can determine whether respondent correctly computed the amount of the alternative minimum tax in accordance with the provisions of sec. 55(1). See note 8.

APPENDIX C

United States Court of Appeals

FOR THE NINTH CIRCUIT

UNITED STATES TAX COURT FILED

FEB 20 P3:26

SAMUEL OKIN,

Petitioner-Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE SERVICE,

Respondent-Appellee.

No. 85-7594 TAX Court No. 24746-83

JUDGMENT

Upon Petition to Review a Decision of The Tax Court of the United States.

This Cause came on to be heard on the Transcript of the Record from The Tax Court of the United States, and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Decision of the said Tax Court of the United States in this Cause be, and hereby is AFFIRMED.

A TRUE COPY
ATTEST FEB 17 1987
CATHY A. CATTERSON
Clerk of Court
by: Deputy Clerk

Filed and entered JANUARY 26, 1987.

APPENDIX D

UNITED STATES TAX COURT

SAMUEL OKIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 24746-83
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

DECISION

Pursuant to the opinion of the Court filed April 24, 1985, and incorporating herein the facts recited in respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is a deficiency in income tax due from the petitioner for the taxable year 1980 in the amount of $18,255.70.

(Signed) [illegible]

Judge.

Entered: AUG 14 1985

* * * * *

APPENDIX B

UNITED STATES TAX COURT
FILED
JUL 8 1985

UNITED STATES TAX COURT

SAMUEL OKIN, Petitioner,	)	
v.	)	Docket No. 24746-83
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation is submitted, on behalf of the respondent, in compliance with the Court's opinion determining the issues in this case, together with a proposed decision which is being lodged concurrently with said computation.

This computation is submitted without prejudice to respondent's right to contest the correctness of the decision entered herein by the Court.

FRED T. GOLDBERG, JR
Chief Counsel
Internal Revenue Service

Date: July 2, 1985

By: S. Clay Freed
S. CLAY FREED
District Counsel

OF COUNSEL:
BENJAMIN C. SANCHEZ
Regional Counsel
J. L. MILLWARD
Internal Revenue Service
P.O. Box 891
Reno, Nevada 89504
Tel. No. (702) 784-5741

CC: REN:JF:JTD

COMPUTATION STATEMENT

IN RE: SAMUEL OKIN
241 SANDS AVENUE
LAS VEGAS, NEVADA 89109

DOCKET NO. 24746-83

INCOME TAX

YEAR	DEFICIENCY
December 31, 1979	$18,255.70

THE DETAILS SUPPORTING THE ABOVE COMPUTATIONS ARE SET FORTH ON ATTACHED PAGES 2 THRU 6.

FORM 886-A (REV. APRIL 1958)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER [illegible] ABLE		YEAR/PERIOD ENDED 1980

INCOME AVERAGING - SCHEDULE 2

THE SECOND PRECEDING BASE PERIOD YEAR'S BASE PERIOD INCOME WAS INCORRECTLY COMPUTED IN THE NOTICE OF DEFICIENCY. THE CORRECT BASE PERIOD INCOME IS $4,993 NOT THE $7,993 AS SHOWN IN THE NOTICE OF DEFICIENCY.

Form 5278 (Rev. May 1982)	Department of the Treasury – Internal Revenue Service **Statement — Income Tax Changes**	Return Form No.	Schedule No.
		1040	1

Name(s) of Taxpayer(s)

SAMUEL OKIN

☐ Notice of Deficiency ☒ Other (specify)
☐ Settlement Computation RULE 155

	Tax Years Ended		
1. Adjustments to income	12-31-80		
a.			
b.			
c.			
d.			
e.			
f.			
g.			
2. Total adjustments	—		
3. a. ☒ Taxable income ☐ Adjusted gross income b. As shown in: ☐ Tax table income ☐ Preliminary letter dated ____ ☒ Notice of deficiency dated 5-10-82 ☐ Return as filed	97,432		
4. ☒ Taxable income as revised ☐ Tax table income as revised ☐ Adjusted gross income as revised	97,432		
5. Tax from ☐ Tax tables ☒ Schedule 2 ☐ Tax rate schedules	32,484		
6. Alternative tax if applicable (from page ____)			
7. Corrected tax liability (lesser of line 5 or 6)	32,484		
8. Less credits (specify) a.			
b.			
c.			
9. Balance (line 7 less amounts on lines 8a through 8c)	32,484		
10. Plus a. Tax from recomputing prior year investment credit			
b. Self-employment tax			
c. ALTERNATIVE MINIMUM TAX - SCH. 3	18,957		
11. Total corrected income tax liability (line 9 plus amounts on lines 10a through 10c)	51,441		
12. Total tax shown on return or as previously adjusted	33,185		
13. Increase ~~or decrease~~ in tax (difference between lines 11 and 12)	18,256 *		
14. Additions to the tax (listed below)			

* due to rounding. Amt limited to $18,

SCHEDULE 2.

HEDULE G
rm 1040)
artment of the Treasury
nal Revenue Service

Income Averaging

▶See instructions on back.
▶ Attach to Form 1040.

1980
21

me(s) as shown on Form 1040
SAMUEL OKIN.

Your social security number
900 08 9222

ase Period Income and Adjustments	(a) 1st preceding base period year 1979	(b) 2d preceding base period year 1978	(c) 3rd preceding base period year 1977	(d) 4th preceding base period year 1976
Enter amount from: Form 1040 (1977, 1978, and 1979)—line 34 Form 1040A (1977 and 1978)—line 10	5,018	6,498	11,879	
Form 1040A (1979)—line 11				
a Multiply $750 by your total number of exemptions in 1977 and 1978		1,500	1,500	
b Multiply $1,000 by your total number of exemptions in 1979	2,000			
Taxable income (subtract line 2a or 2b from line 1). If less than zero, enter zero	3,018	* 4,998	10,379	417
Income earned outside of the United States or within U.S. possessions and excluded under sections 911 and 931				
On your 1980 Form 1040, if you checked box [2 or 5 enter $3,200; 1 or 4 enter $2,200; 3 enter $1,500]				1,600
Base period income (add lines 3, 4 and 5)	3,018	* 4,998	10,379	2,017

mputation of Averageable Income				
Taxable income for 1980 from Schedule TC (Form 1040), Part I, line 3	7	97,432		
Certain amounts received by owner-employees subject to a penalty under section 72(m)(5)	8			
Subtract line 8 from line 7	9	97,432		
Excess community income	10			
Adjusted taxable income (subtract line 10 from line 9). If less than zero, enter zero			11	97,432
Add columns (a) through (d), line 6, and enter here	12	20,412		
Enter 30% of line 12			13	6,124
Averageable income (subtract line 13 from line 11)			14	91,308

If line 14 is $3,000 or less, do not complete the rest of this form. You do not qualify for income averaging.

mputation of Tax				
Amount from line 13			15	6,124
20% of line 14			16	18,262
Total (add lines 15 and 16)			17	24,386
Excess community income from line 10			18	
Total (add lines 17 and 18)			19	24,386
Tax on amount on line 19 (see caution below)			20	7,098
Tax on amount on line 17 (see caution below)	21	7,098		
Tax on amount on line 15 (see caution below)	22	739		
Subtract line 22 from line 21	23	6,349		
Multiply the amount on line 23 by 4			24	25,396
Note: *If no entry was made on line 8 above, skip lines 25 through 27 and go to line 28.*				
Tax on amount on line 7 (see caution below)	25			
Tax on amount on line 9 (see caution below)	26			
Subtract line 26 from line 25			27	
Tax (add lines 20, 24, and 27). Enter here and on Schedule TC (Form 1040), Part I, line 4 and check Schedule G box			28	32,494

ion: Use Tax Rate Schedule X, Y or Z from the Form 1040 instructions to figure your tax on lines 20, 21, 22, 25 and 28. Do not use the tax tables.

SEE PAGE 4.

790-858

SCHEDULE 3

Form **6251** — Department of the Treasury, Internal Revenue Service

Alternative Minimum Tax Computation

▶ See instructions on back
▶ Attach to Forms 1040, 1040NR, 1041 or 990-T (Trust).

1980
35

Name(s) as shown on tax return: SAMUEL, CHU

Identifying number: 900-05-8[illegible]

1	Adjusted gross income from Form 1040, line 32 or Form 1040NR, line 33 (estates and trusts—see instructions)			1	132498
2	Deductions (applies to individuals only):				
a	Enter amount from Form 1040, line 33 or Form 1040NR, line 37	2a	34052		
b	On your 1980 Form 1040, if you checked Filing Status box. 2 or 5, enter $3,400; 1 or 4, enter $2,300; 3, enter $1,700	2b	1700		
c	Multiply $1,000 by the total number of exemptions on Form 1040, line 7	2c	2000		
d	Add lines 2a through 2c (estates and trusts, enter zero)			2d	37752
3	Subtract line 2d from line 1			3	94746
4	Tax preference items:				
a	Adjusted itemized deductions	4a	—		
b	Capital gain deduction	4b	136031		
c	Add lines 4a and 4b			4c	136031
5	Alternative minimum taxable income (add lines 3 and 4c)			5	230777
6	Enter $20,000 ($10,000 if married filing separately, or an estate or trust)			6	10000
7	Subtract line 6 from line 5. If zero or less, do not complete the rest of this form			7	220777
8	Enter the smaller of line 7 or $40,000 ($20,000 if married filing separately, or an estate or trust)	8	20000		
9	Subtract line 8 from line 7	9	200777		
10	Enter the smaller of line 9 or $40,000 ($20,000 if married filing separately, or an estate or trust)	10	20000		
11	Subtract line 10 from line 9	11	180777		
12	Enter 10% of line 8	12	2000		
13	Enter 20% of line 10	13	4000		
14	Enter 25% of line 11	14	45441		
15	Add lines 12, 13 and 14			15	51441
16	Amount from Form 1040, line 47* (estates and trusts—see instructions)	16	32404		
17	Minimum tax from Form 1040, line 49a (estates and trusts—see instructions)	17			
18	Tax from recomputing prior-year investment credit (from Form 1040, line 50) (estates and trusts—see instructions)	18			
19	Add lines 16 through 18			19	32404
20	Alternative minimum tax (subtract line 19 from line 15). If zero or less, do not complete the rest of this form; otherwise, file this form with your tax return			20	19037
21	Foreign tax credit (see instructions)			21	
22	Subtract line 21 from line 20. Enter here and on Form 1040, line 49b (estates and trusts—see instructions)			22	19037

*Do not include any tax from Form 4970, Form 4972, Form 5544, or any penalty tax under section 72(m)(5).

Form 6251 (1980)
PAGE 5

FORM 886-A (REV. APRIL 1968)	EXPLANATION OF ITEMS	SCHEDULE NO. OR EXHIBIT
NAME OF TAXPAYER		YEAR/PERIOD ENDED
[illegible]		1980

Footnote 8, page 9 of Opinion

In the first paragraph the court states that the three figures used in the taxable brackets do not equal the alternative minimum taxable income figure of $231,762.80, and that the income in the third bracket should be $191,762.80 instead of $181,762.80 as shown in the notice of deficiency. The alternative minimum tax computation as contained in the notice of deficiency was not prepared on the applicable form 6251 but was a computer print-out. The computer print-out did not show the exclusion of the first $10,000 of alternative minimum taxable income from alternative minimum tax (see page 5 line 6 of form 6251), but that $10,000 was automatically excluded from the computers computations. The $10,000 exclusion is allowed as per section 55 (a) (1) (A) and amplified by section 58 (a) for married filing separate returns. Accordingly, the amounts per the notice of deficiency are correct.

The court in the second paragraph of footnote 8 on page 9 notes that the first and second bracket amounts of $20,000 each contained in the notice of deficiency do not correspond to the $40,000 brackets as per section 55 (a) (1) (A) and (B). The section 55 (a) (1) (A) (B) brackets are further defined at Section 58 (a). Section 58 (a) states that in the case of a married individual who files a separate return for the taxable year, the amount determined under paragraph (1) of section 55 (a) shall be an amount equal to one-half of the amount which would be determined under such paragraph if the amount of the individual's alternative minimum taxable income were multiplied by 2. Consequently, the $20,000 bracket amounts as shown in the notice of deficiency are correct (see page 5 lines 8 & 10 of form 6251).

APPENDIE F

FILED

MAR - 2 1987

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
- - - - NINTH CIRCUIT - - - - - - - - -x

SAMUEL OKIN,

Appellant,

v.

Docket No. 85-7504

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

- -x

NOTICE OF APPEAL

Notice is hereby given that SAMUEL OKIN, the appellant in the above-captioned appeal, hereby appeals to the United States Supreme Court from the decision and order of the United States Court of Appeals for the Ninth Circuit, dated and entered on the 20th of January, 1987, which decision and order affirmed the decision and order of the United States Tax Court, dated August 14, 1985, ordering and deciding that there is a deficiency in income tax due from the appellantin the amount of $ 18,255.70; and this appeal is from each and every part of said decision and order.

Dated: February 17, 1987.

Samuel Okin

.....

Samuel Okin, Appellant,
241 Sands Avenue,
Las Vegas, Nevada, 89109
702-385-0884

APPENDIX F(i)

FILED

MAR - 2 1987

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

- -x

SAMUEL OKIN,

Appellant,

v. Docket No. 85-7504

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

- x

AMENDED NOTICE OF APPEAL

NOTICE is hereby given that SAMUEL OKIN, the appellant in the above-captioned appeal, hereby appeals to the United States Supreme Court from the decree of the United States Court of Appeals, Ninth Circuit, dated the 17th day of February 1987, and from the decision and order of the said Court of Appeals, dated January 26, 1987, which said decree, decision and order affirmed the decision and order of the United States Tax Court, dated August 14, 1985, ordering and deciding that there is a deficiency in income tax due from the appellant in the amount of $ 18,255.70; and this appeal is from each and every part of the said decree, decision and order of the said Court of Appeals.

Dated: February 20, 1987.

Samuel Okin

Samuel Okin, Appellant,
241 Sands Avenue,
Las Vegas, Nevada, 89109
735-0884

APPENDIX F(2)

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT
- -x

SAMUEL OKIN,

Appellant,

V. Docket No. 85-7504

COMMISSIONER OF INTRENAL REVENUE,

Respondent.

- -x

SECOND AMNEDED NOTICE OF APPEAL

NOTICE is hereby given that SAMUEL OKIN, the appellant in the above-captioned appeal, hereby appeals to the United States Supreme Court from the Judgment of the United States Court of Appeals , Ninth Circuit, filed and entered on 26th day of January, 1987, ordering and adjudging that the Decision of the Tax Court of the United States in this cause be Affirmed, which said Decision of said Tax Court is dated August 14,1985, ordering and deciding that there is a deficiency in income tax due from the appellant in the amount of $ 18,255.70; and this appeal is from each and every part of said Judgment of the said United States Court of Appeals, Ninth Circuit.

The United States Supreme Court has jurisdiction of this appeal under 28 U. S. C. Sec. 1254(2).

Dated: March 14, 1987.

Samuel Okin

.....

Samuel Okin, Appellant
241 Sands Avenue,
Las Vegas, Nevada, 89109
702-735-0484

VI. MINIMUM AND MAXIMUM TAX PROVISIONS

A. Minimum Tax Provisions

81a. Minimum tax for individuals

House bill.—Present law (sec. 56 of the Code) provides a minimum tax on certain tax preferences of individuals and corporations. The minimum tax for individuals amounts to 15 percent of the sum of an individual's (or estate or trusts's) tax preferences in excess of one-half of regular income taxes paid or, if greater, $10,000.

The tax preference items included in this base of the minimum tax for individuals are:

(1) Accelerated depreciation on real property in excess of straight-line depreciation;

(2) Accelerated depreciation on personal property subject to a lease in excess of straight-line depreciation;

(3) Amortization of certified pollution control facilities (the excess of 60-month amortization (sec. 169) over depreciation otherwise allowable (sec. 167));

(4) Amortization of railroad rolling stock (the excess of 60-month amortization (sec. 184) over depreciation otherwise allowable (sec. 167));

(5) Qualified stock options (the excess of the fair market value at the time of exercise over the option price);

(6) Percentage depletion in excess of the adjusted basis of the property;

(7) The deduction for long-term capital gains;

(8) Amortization of child care facilities (the excess of 60-month amortization (sec. 188) over depreciation otherwise allowable (sec. 167));

(9) Itemized deductions (other than medical and casualty loss deductions) in excess of 60 percent of adjusted gross income; and

(10) Intangible drilling costs on oil and gas wells in excess of the amount amortizable with respect to those costs and, for 1977, in excess of net income from oil and gas production.

The House bill removes capital gains as an item of tax preference subject to the existing 15-percent minimum tax. However, the bill provides for the imposition of an alternative minimum tax at a rate of 10 percent on one-half of a noncorporate taxpayer's net capital gains (not including any gain recognized on the sale of the taxpayer's principal residence), reduced by a $10,000 exemption, if this amount exceeds the taxpayer's regular tax liability as computed after the application of tax credits. The tax applies to individuals, estates and trusts.

Under the bill, noncorporate taxpayers who realize capital gains would compute their regular tax liability, and compare this amount with that calculated under the alternative minimum tax. These amounts would be compared prior to being increased by the amount,

if any, of the existing 15-percent minimum tax. For this purpose, regular tax liability is computed before subtraction of the credit for withheld tax (sec. 31), the credit for refunds of taxes on gasoline, etc. (sec. 39), and the earned income credit (sec. 43), but after the subtraction of other credits.

Where the alternative minimum tax exceeds the regular tax, no credits generally will be allowable against the alternative minimum tax liability. However, certain refundable credits will be allowed against the alternative minimum tax (i.e., the credit for withheld taxes, the credit for refunds of gasoline and other fuel taxes, and the earned income credit), because the amounts involved would be available as refunds to the taxpayer in any event.

Senate amendment.—The Senate amendment repeals the present law minimum tax for individuals beginning in 1979 and establishes an alternative minimum tax, under which a taxpayer pays the alternative minimum tax only where it exceeds the taxpayer's regular income tax.

Generally, the tax base for the alternative minimum tax is taxable income plus the taxpayer's preferences items for the year. This amount then is reduced by a $20,000 exemption and subject to the following minimum tax rates:

	Percent
0–$40,000	10
$40–$80,000	20
Over $80,000	25

The amount of minimum tax is the amount by which the tax computed under this rate schedule exceeds the taxpayer's regular tax. Thus, although the tax is in effect a true alternative tax, in the sense that it is paid only when the amount of tax computed under the above schedule exceeds regular tax, technically the taxpayer's regular tax continues to be imposed and the amount of alternative minimum tax is the excess of the amount computed under the minimum tax rate table over the amount of the regular tax.

The provision then allows a foreign tax credit and the refundable credits against this tax is the amount in excess of the taxpayer's regular tax.

In general the preferences for purposes of the new alternative minimum tax are the same as under present law. The preference for excluded gain from the sale or exchange of a capital asset is increased, however, to conform to the higher capital gains deduction. (This change in the capital gains preference also is made with respect to the increased deduction provided for gains from sales or exchanges occurring in November and December 1978, which is treated as a preference under the present law minimum tax.) Also, gain from the sale of principal residences is not included as a preference under the alternative minimum tax (or under the add-on minimum tax for sales in November or December 1978).

In addition, the amendment makes permanent the preference for intangible drilling costs in excess of oil income as modified by the Tax Reduction and Simplification Act of 1977 and as agreed to by both the House and Senate in their versions of the energy tax legislation of this Congress. Under the amendment, intangible drilling cost deductions for oil and gas wells would be included in the minimum

tax base of individuals only to the extent that intangible drilling and development costs, over the amount of those costs amortizable on the basis of a 10-year life or under cost depletion, exceed the net taxpayer's income from oil and gas properties.

In addition, the amendment significantly modifies the preference for adjusted itemized deductions. Under the amendment, itemized deductions (as under present law) plus State and local tax deductions and, in the case of income in respect of decedents, amounts deducted (under sec. 691(c)) for estate taxes. The remaining itemized deductions are preferences to the extent they exceed sixty percent of adjusted gross income minus the medical and casualty deductions, State and local taxes and the estate tax described above.

The provision contains two special elections to allow taxpayers to avoid claiming an item of tax preference to reduce their regular tax. First, the amendment allows a taxpayer, in the manner prescribed by the Secretary, to elect to capitalize intangible drilling costs with respect to any oil and gas property. This property by property election replaces the election under present law which once made by a taxpayer applies for all oil and gas properties for all years of that taxpayer. Second, the amendment includes a provision allowing any recipient of a stock option which continues to meet the requirements for preferential treatment provided in secs. 422 or 424 of the Code) under transitional rules provided in the 1976 Tax Reform Act to be treated as nonqualified options and taxed under section 83 of the Code.

Finally, the amendment provides that certain charitable lead trusts which received transfers of property prior to January 1, 1977, would not be subject to the preference for adjusted itemized deduction for contributions attributed to that property.

The amount of income subject to the alternative minimum tax is gross income reduced by all deductions (other than any net operating loss deduction) and by any nonpreferential net operating loss and increased by the amount of tax preferences. This net amount, reduced by a $20,000 exemption is subject to the alternative minimum tax rates described above.

The alternative minimum tax is paid only to the extent that it exceeds an individual's regular tax. A taxpayer's regular tax means the taxes imposed by chapter 1 of the Code other than the alternative minimum tax and the penalty taxes applicable in certain circumstances. These taxes are to be reduced by all nonrefundable credits including the foreign tax credit (sec. 33). Thus, taxpayers paying the alternative minimum tax are not to obtain the benefit of nonrefundable credits other than the foreign tax credit to the extent of that taxpayer's alternative minimum tax. However, the amendment provides that in the case of certain credits, any credit carryovers to future years from a year in which the taxpayer is liable for some amount of alternative minimum tax are not to be reduced to the extent of the taxpayer's alternative minimum tax liability.

The foreign tax credit is to be allowed against the alternative minimum tax. Under the provision the amount of credit allowed is to be determined under the normal foreign tax credit limitation rules (sec. 904), but the computation of the limit is to be modified to include preference items which are added back in computing income

subject to minimum tax. Thus, a taxpayer's foreign source income on which foreign tax credits are allowed is to be increased by any preference attributable to foreign sources (or, in the case of deduction preferences, those properly allocated or apportioned to foreign source income) and a taxpayer's entire taxable income is to be increased by all preferences.

Under special rules for net operating losses, a taxpayer's income for alternative minimum tax purposes is to be reduced by net operating loss deductions only to the extent of the taxpayer's "nonpreferential net operating loss deduction," which is defined as the net operating loss deduction computed without regard to items preference included in that deduction. Thus, a taxpayer is allowed to reduce income subject to the new alternative minimum tax only by any net operating loss deduction to the extent of nonpreference losses making up the deduction.

The provision also includes special rules for the application of the alternative minimum tax in the case of trusts. First, the $20,000 exemption from the tax is to be allocated in the case of trusts. Second, in the case of a trust making current distributions of tax preferences which are items of deductions other than depletion and depreciation (e.g., intangible drilling costs) are to be allocated to beneficiaries where appropriate under regulations prescribed by the Secretary. (Of course, a trust is to receive the same deduction for alternative minimum tax purposes for the amount of income currently distributed as is received for regular tax purposes.)

Finally, in the case of accumulation distributions from a trust, the amount of taxes deemed imposed on the trust is not to be increased by any alternative minimum tax in excess of the trust's regular tax liability. Thus, no credit is available to pay any beneficiary of an accumulation distribution for any minimum tax paid by the trust with respect to that distribution; however, under the normal trust rules, no amount received by that beneficiary is treated as an item of tax preference to the beneficiary.

In general, the provision is effective for taxable years beginning after 1978. In addition, the provision is not to be treated as a change of the rate of tax (under sec. 21 of the Code). Thus, fiscal year taxpayers are to first be subject to the new minimum tax for their taxable year beginning in 1979.

However, the provisions changing the effective date for the preferences for capital gains (to 60 percent of net capital gain) for purposes of the present law minimum tax is to apply for all sales or exchanges taking place after October 31, 1978.

For purposes of both effective dates payments received after the effective date with respect to pre-effective date installment sales are to be taxed under the new provisions applicable generally to sales made after the effective date.

Conference agreement.—The conference agreement adopts a modified form of the provisions contained in the House bill and the Senate amendment. It retains the present law minimum tax with respect to all preference items except the deducted amount of capital gains and excess itemized deductions. In addition, it provides for an alternative minimum tax which is paid by an individual only to the extent that it

exceeds regular tax paid as increased by the present add-on minimum tax. Under the conference agreement, noncorporate taxpayers would compute regular tax liability and increase it by the amount of any add-on minimum tax liability. This sum then would be compared to the amount of tax computed under the alternative minimum tax formula. The alternative minimum tax, the computation of which generally follows that contained in the Senate amendment, is based on the sum of an individual's taxable income (as computed under present law), adjusted itemized deductions, and the amount of any capital gains deduction. This total would be subject to the tax rates contained in the Senate amendment. If liability computed under the alternative minimum tax exceeds that calculated under the present regular income tax, as increased by the present add-on minimum tax, the individual would pay the greater amount.

For the alternative minimum tax the conference agreement adopts the exemption, rates, and computation methods contained in the Senate amendment. In addition, it follows the Senate amendment's definition of adjusted itemized deductions. Thus, under the conference agreement, itemized deductions subject to the preference would exclude medical and casualty deductions (as under present law) plus State and local tax deductions, and, in the case of income in respect of decedents, amounts deducted (under section 691(c)) as estate taxes. The remaining itemized deductions are preferences only to the extent that they exceed 60 percent of adjusted gross income reduced by the medical and casualty deductions, State and local taxes, and the estate tax deduction previously described.

The conference agreement also retains those provisions of the Senate amendment which relate to certain charitable lead trusts and tax credits. Thus, the foreign tax credit is to be allowed against the alternative minimum tax. However, individuals paying the alternative minimum tax are not to obtain the benefit of nonrefundable credits other than the foreign tax credit to the extent of that individual's alternative minimum tax. Investment credit and jobs credit carryovers to future years, from a year in which the taxpayer is liable for some amount of alternative minimum tax, are not to be reduced to the extent the alternative minimum to the extent the alternative minimum tax liability reduced the benefit of these credits.

In the case of trusts and estates, the conference agreement provides special rules for the reduction of the exemption and the treatment of preference items.

Because the conference agreement retains the present add-on minimum tax with respect to deferral preferences, the agreement does not adopt that part of the Senate amendment which would allow new elections in the case of intangible drilling costs and stock options.

The conference agreement makes permanent the preference for intangible drilling costs in excess of oil income which was adopted for 1977 by the Tax Reduction and Simplification Act of 1977. Under the conference agreement, intangible drilling costs deductions would be included in the minimum tax base of individuals only to the extent that those costs, over the portion of those costs amortizable on the basis of a 10-year life or under cost depletion, exceed the taxpayer's income from oil and gas properties. Income from oil and gas properties

is to be determined first with regard to the rules for determining gross income from oil and gas properties for purposes of percentage depletion (sec. 613(a) of the Code, without regard to the limitations under sec. 613A). Net income from oil and gas properties is gross income from those properties reduced by the amount of deductions (other than intangible drilling costs subject to the preference) properly attributable to that gross income. The conferees also clarified that under the provision deductions attributable to properties with no gross income are not to be taken into account for purposes of computing net income from oil and gas properties.

The conference agreement follows the House bill and the Senate amendment in providing that no amount of gain from the sale of principal residence is included as a preference item under the alternative minimum tax (or under the present minimum tax for sales in November and December, 1978).

The capital gains preference is conformed to the increased capital gains deduction provided in the conference agreement. (This change in the capital gains preference also is made with respect to the increased deduction allowed for gains from sales or exchanges occurring in November and December 1978, which is treated as a preference under the present law minimum tax.)

In general, the conference agreement is effective for taxable years beginning after 1978. In addition, the provision is not to be treated as a change of the tax rate (under sec. 21 of the Code). Consequently, fiscal year taxpayers are to be subject first to the alternative minimum tax for their taxable years beginning in 1979. The conference agreement provisions changing the effective date for the capital gains preference (to 60 percent of net capital gain) for purposes of the present minimum tax is to apply for all sales and exchanges taking place after October 31, 1978.

For purposes of both effective dates, payments received after the effective date with respect to pre-effective date installment sales are to be taxed under the new provisions applicable generally to sales made after the effective date. (emphasis supplied)

81b. Corporate minimum tax

House bill.—Under present law, a 15 percent minimum tax is imposed on the sum of a corporation's tax preferences less the greater of $10,000 or the full amount of the corporation's regular tax. Generally, the tax preference items are the same for corporations as they are for individuals. However, corporate minimum tax preference items differ in the following respect: (1) the capital gains preference is 18/48th of net capital gains, (2) certain reserves for losses on bad debts of financial institutions are preference items, and (3) the individual preferences for itemized deductions, accelerated depreciation on leased personal property, and intangible drilling costs do not apply to corporations.

The House bill, for taxable years beginning after December 31, 1978, eliminates corporate capital gains as an item of tax preference.

Senate amendment.—No provision.

Conference agreement.—The conference agreement does not contain this provision, and thus corporate capital gains remain an item of tax preference.